

Latoya  
Guen



August 20, 2020

Louisiana Ethics Administration Program  
PO Box 4368  
Baton Rouge, LA 70821

To whom it may concern,

I am requesting an advisory opinion rendered by the Louisiana Board of Ethics. Below is a little history on the involved parties.

McNeese State University (University), located in Lake Charles, Louisiana, was established in 1939 and serves as a cultural and educational center for Southwest Louisiana. The University offers associate, baccalaureate, and specific graduate curricula in the areas of business, education, engineering, liberal arts, nursing and science. McNeese is under the management and supervision of the Board of Supervisors of the University of Louisiana System (ULS). As a state university, operations of McNeese's instructional programs are funded through annual lapsing appropriations made by the Louisiana Legislature and is a publicly supported institution of higher education.

The McNeese State University Foundation (Foundation) was incorporated in 1965 as a 501(c)(3), non-profit organization established to support student scholarships through endowments. Since 1965, the Foundation's mission has broadened to include support for endowed faculty professorships. Centers for teaching excellence, cultural programming, athletic enhancement, and other projects linked to McNeese State University's interests are also supported through the Foundation. The McNeese Foundation's purpose is to identify, cultivate, solicit, and steward private gifts including real and personal property, limited or conditional gifts, grants, planned gifts or other bequests offered toward advancement of the institution. The Foundation annually awards over \$2 million in funding for student scholarships, faculty development, campus improvement, state-of-the-art technology, and other academic enhancements.

The Foundation operates under an Affiliation Agreement (enclosed) with the University in accordance with Revised Statute 17:3390 and is a separate entity from the University. The McNeese Foundation is not a TRSL agency. According to the Affiliation Agreement, the McNeese Foundation has the right to use a reasonable percentage of the annual unrestricted funds for services to support its operations.

The following statute describes the relationship between McNeese State University and the McNeese State University Foundation.

**RS 17:3390** Private nonprofit corporations which support public higher education institutions; findings; status; private funds

A. The legislature finds that private support enhances the programs, facilities, and research and educational opportunities offered by public institutions of higher education in Louisiana. Therefore, each higher education management board and institution is hereby encouraged to promote the activities of alumni associations, foundations, and other private, nonprofit organizations that raise private funds for the support of public institutions of higher education. ***Further, it is recognized that private, nonprofit organizations under the direction and control of private individuals who support institutions of higher education are effective in obtaining private support for those institutions.***

B. A nonprofit corporation, whose principal purpose is to support one or more programs, facilities, or research or educational opportunities offered by public institutions of higher education, including but not limited to any nonprofit corporation whose primary purpose is to finance the design, construction, renovation, or equipping of facilities to be leased to such public institutions of higher learning, ***shall be a private entity that shall not be deemed to be a public or quasi-public corporation or an administrative unit, public servant, employee, or agent of any institution of higher education for any purpose whatsoever if it meets all of the following criteria:***

(1) The majority of the voting members of the corporation's board of directors are not members or employees of a higher education management board.

(2) The corporation is under the management and control of a board of directors elected by the members or shareholders of the corporation.

(3) The corporation reimburses, either directly or through in-kind services, the cost of housing, personnel, which personnel shall remain public servants for all purposes, and other support furnished to the corporation by any institution of higher education, if any such support is furnished.

With that being said, we have three questions on the following situation.

Mr. Richard H. Reid, a state employee, whose salary is paid by the University, was the former Vice President for University Advancement at McNeese State University and Executive Vice President for the McNeese Foundation until June 30, 2020. Mr. Reid is currently serving as Senior Assistant to the University President and plans to retire from the University on October 31, 2020 through the Teachers' Retirement System of Louisiana (TRSL).

While serving as the Vice President for University Advancement and Executive Vice President for the McNeese Foundation, Mr. Reid reported directly to the University President. His responsibilities included the following:

- Plans, directs and manages all activities and professional staffing in the advancement, alumni relations, and Banners program areas
- Develop and manage total budgetary needs for these programs with fiscal reporting responsibilities as directed by the president
- Takes overall responsibility for the University's donor relations programs, including the planning and staffing of all donor cultivation efforts

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- Serves as primary staff to the University President with regard to philanthropic support and public affairs; serves as a member of the executive staff
- Serves as primary role in the cultivation and solicitation of major donors to the University
- Provides executive leadership in the planning and implementation of the proposed Capital Campaigns
- Advises fundraising efforts in support of Athletics

The McNeese Foundation would like an advisory opinion on whether or not the Foundation would be allowed to hire Mr. Reid upon his retirement from the University as a part-time advisor. He will be exclusively a non-public employee of the Foundation and no longer a public servant. His primary work would be to cultivate and solicit senior donors and building relationships between the new Vice President and current donors. Mr. Reid would no longer have decision making authority or be involved in financial decision making.

My specific questions are:

1. Would it violate any code of governmental ethics laws for the McNeese State University Foundation to hire Mr. Richard Reid as a part-time, non-public W-2 employee?
2. Would it violate any code of governmental ethics laws for the McNeese State University Foundation to hire Mr. Richard Reid as a part-time, non-public contract employee (1099)?
3. Would it violate any code of governmental ethics laws for the McNeese State University Foundation to have Mr. Richard Reid as a Volunteer and provide him reimbursement for expenses?

If you should have any questions concerning our request, please feel free to contact me at your convenience.

Sincerely,



Dr. Wade Rouse  
Executive Vice President

Enclosure  
WR/men

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**AFFILIATION AGREEMENT**

**THIS AGREEMENT** made and entered into this 10<sup>th</sup> day of August 2017,

by and between

**MCNEESE STATE UNIVERSITY**  
(herein called "University")

and the

**MCNEESE STATE UNIVERSITY FOUNDATION**  
(herein called "Affiliate");

**WHEREAS**, as stated in its articles of incorporation, the Affiliate is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the University; soliciting cash, securities, real and intellectual property, and other private resources for the support of the University; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities; and

**WHEREAS**, this Affiliate is often closely identified with the University, if not in fact, at least in the perception of citizens, alumni, and contributors to the support and development of the University; and

**WHEREAS**, the University recognizes that gifts coming to the Affiliate are made with thoughtful care and with great affection for and devotion to the University for the purpose of supporting the University's institutional goals, including its instruction, research and public service missions and its students, faculty and staff; and

**WHEREAS**, the Affiliate renders invaluable support to and works very closely with the University; and

**WHEREAS**, the Affiliate and the University recognize their mutual interest in guarding against even the appearance of impropriety in their activities; and

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**WHEREAS**, it is, therefore, prudent and beneficial for the University and this Affiliate to document clearly their relationship and their respective responsibilities and authority.

**NOW, THEREFORE**, recognizing the importance of an agreement between the parties on acceptable standards and procedures for the accounting and auditing of accounts of the Affiliate, while at the same time preserving the private and independent status of the Affiliate, the University and the Affiliate agree as follows:

### **The Affiliate's Relationship to the University**

1. The Affiliate is a separately incorporated 501(c)(3) non-profit organization created to raise, manage, distribute, and steward private resources to support, advance, and promote the various missions of the University.
2. The Affiliate's board of directors is responsible for the control and management of all assets of the affiliate, including the prudent management of all gifts consistent with donor intent.
3. The Affiliate is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly address the board's fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies.
4. The Affiliate shall not engage in activities contrary to the objective of providing support to the University. Nothing herein is intended to limit the ability of the Affiliate to expend funds on its behalf to achieve the mutual goals of the Affiliate and the University.

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### **The University's Relationship to the Affiliate**

1. The University President or his/her designee should communicate the university's priorities and long-term plans to the Affiliate. The chief executive of the Affiliate should have regular, reasonable access to the University President or his/her designee and to other members of the President's senior administrative team for the purpose of being an active and prominent participant in strategic planning for the University.
2. The University recognizes that the Affiliate is a private corporation with the authority to keep all records and data confidential consistent with state and federal law, University policy or as mutually agreed-upon within this document.

### **Affiliate Responsibilities**

#### **Fund Raising**

1. The Affiliate shall create an environment conducive to increasing levels of private support for the mission and priorities of the University.
2. The Affiliate, in consultation with the University President or his/her designee, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the institution's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate. The Affiliate will also assist and coordinate with the University's development office for the operation, development, accounting, management, and marketing activities of these programs.

#### **Asset Management**

1. The Affiliate will receive, hold, manage, invest, and disperse contributions of cash, securities, and things of economic value of all kinds, including property, both real and intellectual, whether principal or income, tangible or intangible, including immediately

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vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

2. The Affiliate may serve as an instrument for entrepreneurial activities for the university and engage in such activities as purchasing, developing, or managing real estate for university expansion, student housing, or retirement communities. It also may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by their parties, or engage in other activities to increase foundation revenue with no direct connection to a university purpose.
3. The books and records of the Affiliate shall be kept in accordance with generally accepted accounting principles.
4. When the Affiliate has funds in excess of \$250,000 not needed for current year's operations, the Affiliate's board of directors will establish asset investment policies that adhere to applicable federal and state laws, including the Uniform Prudent Investor Act (UPLA).
  - a. Donations that have specific directions or investment restrictions shall be invested by the Affiliate in its sole discretion, subject only to the specific directions or restrictions of the particular donation.
  - b. In accordance with Article 7, Section 14 of the Louisiana Constitution, no funds or property of the university may be donated, loaned, or pledged to any Affiliate, unless the parties agree to a cooperative endeavor for a specific, defined project. In such an instance, the parties will enter into a cooperative endeavor agreement, which must be approved by the UL Board of Supervisors and, if applicable, the Division of Administration.

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- c. The University may choose to use the Affiliate's management expertise regarding the maintenance of investment portfolios to assist the University with its Endowed Chair and Endowed Professorships Program. Should the University and the Affiliate agree to this arrangement, they will enter into a Funds Management Agreement. In accordance with the Funds Management Agreement, the Affiliate shall comply with the Board of Regents' Statement of Investment Policy and Objectives, which also includes specific audit requirements.

### **Affiliate Funding and Administration**

1. The Affiliate has the right to use a reasonable percentage of the annual unrestricted funds and assess fees for services to support its operations.
2. The Affiliate shall reimburse, either directly or through in-kind services, the cost of housing, personnel, which personnel shall remain public servants for all purposes, and other support furnished to the Affiliate by the University, if any, pursuant to R.S. 17:3390(B)(3). Reimbursement of any amounts due to the University shall be remitted within 90 days of the date of purchase or services rendered. Amounts payable to the University at June 30<sup>th</sup> shall be remitted within 30 days to allow the University to accomplish timely fiscal year-end accounting close-outs.
3. Under no circumstances shall any of the net earnings or assets of the Affiliate inure to or be distributed to the benefit of its directors, officers, or other private persons, except that the Affiliate shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the overall purpose of the Affiliate.
4. The Affiliate shall be responsible for establishing and implementing a system of controls that ensure compliance with all applicable laws and regulations, specifically including state and federal laws regarding the non-profit, tax-exempt status of the entity.



## ***Affiliation Agreement***

### **a. Approved Expenses**

- 1) All disbursements by Affiliate for administrative and operating expenses shall be in accordance with policies adopted by its governing board previously or within 120 days of this agreement (if no such written policy exists). Such policies shall provide for sound and prudent business practices, the payment or reimbursement of ordinary, necessary and reasonable business expenses, and the avoidance of conflicts-of-interests.
- 2) Any supplemental compensation and/or benefits for a University employee must be approved by the Board of Supervisors, upon recommendation of the University and System Presidents, before they are paid. Absent exceptional circumstances and approval by the System President, such compensation or benefits shall be paid through the University, not directly to the employee by the Affiliate. For purposes of this paragraph, supplemental compensation or benefits shall mean all compensation or benefits in addition to the base University compensation and benefits approved by the Board of Supervisors for duties performed for the University.
- 3) Reasonable travel, entertainment, educational benefits or reimbursements may be paid to a University employee (or authorized traveler, if applicable) in accordance with University policies and procedures. Payments may be made for such expenses within and above state limits when specifically approved by appropriate University administrators in accordance with University policy. Pending further specification of University policy, such expenses require approval of the employee's dean, vice president or other equivalent administrative official.
- 4) Reasonable moving or relocation expenses of a University employee may be paid only upon recommendation of the University President.
- 5) Any single payment of \$1,000 or more made to or on behalf of a university employee must be reported to the university on a quarterly basis. Supporting documentation must be made available to the university upon request.

### **b. Prohibited Expenses**

- 1) Fines, forfeitures or penalties of a University employee may not be paid.
- 2) The Affiliate may not present gifts on behalf of a university employee nor reimburse university employees for gifts that are represented as having personally come from the employee.
- 3) Political contributions prohibited by applicable Internal Revenue Service Regulations or state laws and regulations may not be made or reimbursed. Accordingly, the Affiliate will not provide funds in any manner for university employees to endorse political parties or candidates, attend political fund-raisers, participate in lobbying activities, etc.
- 4) Any expense or reimbursement that would create, under all the circumstances, a reasonable conclusion on behalf of the Affiliate that the benefit to the

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individual University employee outweighs the benefit to the University may not be paid.

- 5) Any expense or reimbursement that would create, under all the circumstances, a reasonable conclusion on behalf of the Affiliate that the amount is extravagant or lavish beyond the appropriate University purpose may not be paid. While not necessarily controlling, reference should be made to regulations adopted by the Internal Revenue Service in connection with allowed business expenses.
  - 6) Funds shall not be disbursed in connection with contracts (or other agreements) between the Affiliate and a University employee unless justified in writing and with specificity demonstrating, among other justifications, that the proposed contractual duties with the Affiliate are not those which the employee should perform directly for the University. All such contracts must be approved by the University President in accordance with PPM FS-III.VII.-1. The requirements of the *Louisiana Code of Governmental Ethics* must also be considered by the Affiliate if the University employee (or a related person) has an ownership interest in a legal entity with which the Affiliate is considering contracting.
  - 7) Any expense or reimbursement request not described above as authorized (or through written joint amendment or clarification of this Agreement) shall not be paid to or on behalf of a University employee without specific recommendation of the University President.
5. The Affiliate's financial statements shall be audited annually in accordance with generally accepted auditing standards by an independent professional auditor who shall furnish to the University and the legislative auditor copies of his annual audit and management letter (including supplemental assurances) within six months of the Affiliate's fiscal year end. [R.S. 17:3390(D)(1)]
- a. The Affiliate's engagement letter with the independent CPA will require that the auditor provide supplemental assurances that the Affiliate has complied with specific requirements of the Affiliation Agreement that will be determined by the University. The National Collegiate Athletic Association (NCAA) requires that the University President submit a report that includes all athletic financial activity (both internal and external) to assist him/her in maintaining adequate oversight of and in exercising control over financial activity of or on behalf of the University's

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intercollegiate athletics program. Therefore, the Affiliate's audited annual financial statements will include a supplementary schedule in a format provided by the University of all revenues, expenses and capitalized expenditures made to or on behalf of the University's intercollegiate athletics program.

- 1) The independent auditor's report will include assurances that this schedule is fairly stated in relation to the Affiliate's financial statements taken as a whole.
  - 2) If the Affiliate has no transactions relating to the University's athletics program, the notes to the financial statements will include a statement to this effect.
  - 3) The Affiliate will make available to the University's independent auditor any documentation that is required to enable that auditor to perform the supplemental procedures that are required by the NCAA for affiliated organizations.
- b. Any audit findings, audit exceptions, or any misuse of funds shall be reported to the Affiliate's Board of Directors, who shall maintain a written corrective action plan regarding the handling and resolution of such occurrences. A copy of this corrective action plan shall be provided to the University President. The Affiliate shall take appropriate corrective action to remedy such occurrences.
6. The Board of Supervisors for the University of Louisiana System may, at any time, review all accounting records, files, and documentation of the Affiliate that pertain to payments made to or on behalf of university employees and/or university

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programs/projects. Notwithstanding the preceding requirements, the identity of donors to the Affiliate shall be exempt and not available for disclosure.

- a. Should the Board of Supervisors determine that a more in-depth review or audit of the Affiliate's records is necessary, the Affiliate will be instructed to contract for a agreed-upon procedures engagement with a CPA that is mutually acceptable to both the Affiliate and the Board. The ULS Board's Finance Committee Chairman will select the CPA to perform the engagement in the event that a CPA acceptable to both parties has not been identified within 60 days of the Board's initial written request for the agreed-upon procedures engagement.
- b. The Board's Finance Committee Chairman (or the System President, if so designated by the Board) will identify the agreed-upon procedures that will be performed and will approve the engagement agreement between the Affiliate and the CPA.

### **University Responsibilities**

1. The University President will work in conjunction with the leadership of the Affiliate to identify, cultivate, and solicit prospects for private gifts.
2. The University shall accept funds from the Affiliate for the purpose of promoting the well-being and advancement of the University and to develop, expand, and improve the University's curricula, programs, and facilities so as to provide greater educational advantages and opportunities; encourage teaching, research, scholarship, and service; and increase the University's benefits to the citizens of the State of Louisiana and the United States of America.

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3. The University shall use such funds in accordance with the terms and conditions as may be imposed by testators and donors, within the limits of the law.
4. The University and the Affiliate shall have open communication regarding both the application of the policies set forth herein and mechanisms that would allow each party to better accomplish their common goals. The University President will bring any recommendations that arise from such discussions to the University of Louisiana System President for further consideration.

#### **Terms of the Affiliation Agreement**

1. This Affiliation Agreement is intended to set forth policies and procedures that will contribute to the coordination of mutual activities of the University and the Affiliate.
2. Either party may, upon 90 days prior written notice to the other, terminate this agreement. Notwithstanding the foregoing, either party may terminate this agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written show cause notice.
3. Should the University choose to terminate this agreement, the Affiliate may require the University to pay, within 180 days of written notice, all debt incurred by the Affiliate on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Affiliate choose to terminate this agreement, the University may require the Affiliate to pay debt it holds on behalf of the Affiliate in like manner.
  - a. Should the University choose to terminate this agreement, the agreement shall continue in full force and effect until receipt by the Affiliate of the notice of termination, and any transactions entered into by the Affiliate prior to the receipt

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of such notice shall be binding upon the University. In such case, the Affiliate shall be prohibited from using the University's name to solicit donations or for any other purpose and shall not in any way represent to alumni, contributors, or the general public that said Affiliate is affiliated with the University.

- b. Should any substantial misuse of funds or fraudulent activity on the part of the Affiliate be discovered, the University may, at its discretion, immediately terminate this agreement. In such case, the Affiliate shall be prohibited from using the University's name to solicit donations or for any other purpose and shall not in any way represent to alumni, contributors, or the general public that said Affiliate is affiliated with the University.
4. Should the Affiliate cease to exist, fail to maintain an affiliation agreement with the University, or the affiliation agreement is terminated by either party, all Affiliate funds will become the property of the University or other University-affiliated organizations approved by the University in accordance with donor intent. The Affiliate will remit the funds to the University or to another Affiliate approved by the University using the timeline or schedule of transfers to be provided by the University.
5. Nothing in this Agreement shall be construed as to invalidate or restrict the Affiliate's private and independent status.
6. Whenever any notice or demand is required or permitted under this Agreement, such notice or demand shall be given in writing and delivered in person or by certified mail to the following addresses:

University: McNeese State University  
Office of the President  
Box 93300  
Lake Charles, LA 70609


Affiliate: McNeese State University Foundation  
Executive Vice President  
Box 91989  
Lake Charles, LA 70609

## ***Affiliation Agreement***

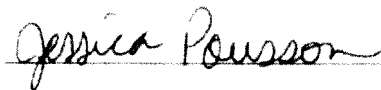
7. This agreement constitutes the entire agreement between the parties and shall be amended in writing, executed by all parties hereto.

**IN WITNESS WHEREOF**, the parties have caused this Affiliation Agreement to be executed by their duly authorized officers as of the day and date first above written.

WITNESSES:



McNeese State University

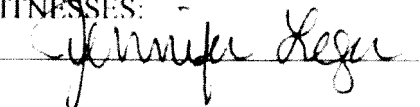


By:

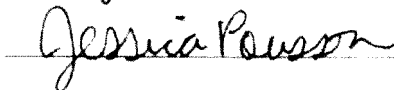


President

WITNESSES:



McNeese State University Foundation



By:



President

## Kathleen Allen

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**From:** Victoria M Roach <vroach@mcneese.edu>  
**Sent:** Thursday, August 20, 2020 9:57 AM  
**To:** Kathleen Allen  
**Cc:** Melissa Ellis Northcutt  
**Subject:** McNese Foundation Advisory Opinion Request  
**Attachments:** MCNEESE FOUNDATION ETHICS ADV OP.pdf

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**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

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Good Morning Kathleen -

Attached is an advisory opinion request from the McNeese Foundation regarding the topic of post employment that you and I had briefly discussed about a week ago. I am sending it via email in order to meet the submission deadline for inclusion on the agenda for the next board meeting. The Foundation is putting the original in the mail today. Mr. Reid plans to retire on October 31st so it is important that they obtain an advisory opinion prior to this date. Can you please see that this document gets to the correct person and/or location? Thank you and please let me know if you have any questions.

Thank you,

Victoria M. Roach, CPA, CICA  
McNeese State University  
Director of Internal Audit & Ethics Liaison  
(337) 475-5590  
(337) 475-5589 (fax)  
vroach@mcneese.edu